

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

SENTRY INSURANCE, a mutual  
company,

Plaintiff,

v.

DOUBLE L, INC.; SALVADOR  
NAVARRO; MARIA DE LOS  
ANGELES; and DOES 1 through  
10, inclusive,

Defendants.

NO. CV-11-0020-EFS

**ORDER GRANTING PLAINTIFF'S  
MOTION FOR PARTIAL SUMMARY  
JUDGMENT**

On October 11, 2011, a hearing occurred in the above-captioned matter. Bradley Smith and Mark Inbody appeared on Plaintiff Sentry Insurance's ("Sentry") behalf. Defendant Double L, Inc. was represented by John Bailey, Jr.; Bryce McPartland appeared on behalf of Defendants Salvador Navarro and Maria de Los Angeles. Before the Court was Sentry's Motion for Partial Summary Judgment, ECF No. [20](#), which asks the Court to declare that Sentry is not obligated to defend or indemnify Double L, Inc. in a lawsuit filed by Mr. Navarro and Ms. de Los Angeles (hereafter referred to as the "underlying lawsuit"). Double L, Inc. opposes the motion. After reviewing the submitted material, hearing from counsel, and considering the relevant authority, the Court is fully informed and, for the reasons given below, grants Sentry's motion: Sentry has neither a duty to defend nor indemnify Double L, Inc.

1 **A. Factual Background**<sup>1</sup>

2 Double L, Inc. was a farm equipment manufacturer. In 2006, Apache  
3 River, LLC ("Apache River") purchased Double L, Inc.'s assets, including  
4 inventory, work in progress, and goodwill. The purchase was memorialized  
5 through an October 31, 2006 Purchase Agreement, which contains "save  
6 harmless" and "indemnification" provisions, but does not require Apache  
7 River to name Double L, Inc. as a named insured on its insurance policy  
8 with Sentry (or another insurer). After this asset purchase, Apache  
9 River conducted business under the name Double L while Double L, Inc.  
10 continued to remain a corporation in good standing in Idaho.

11 In 2009, Mr. Navarro was paralyzed after a part of a potato bin  
12 piler manufactured in 2000 by Double L, Inc. fell on him. Mr. Navarro  
13 and his wife filed the underlying lawsuit against Double L, Inc., Apache  
14 River, and other businesses. *See Navarro v. Double L, Inc.*, No-CV-09-  
15 394-JPH. In the underlying lawsuit, Sentry is defending both Double L,  
16 Inc. and its named insured Apache River under a reservation of rights.  
17 Sentry filed this action to seek a declaration that it owes Double L,  
18 Inc. neither a duty to defend nor indemnify.

19 **B. Summary Judgment Standard**

20 Summary judgment is appropriate if the record establishes "no  
21 genuine issue as to any material fact and the movant is entitled to  
22 judgment as a matter of law." Fed. R. Civ. P. 56(a). The party opposing

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23  
24 <sup>1</sup> The facts are not disputed; therefore, this factual statement is  
25 based on Sentry's statement of facts, ECF No. [22](#), and the submitted  
26 declarations. The Court also takes judicial notice of the documents  
attached to ECF No. [23](#). Fed. R. Evid. 201.

1 summary judgment must point to specific facts establishing a genuine  
2 issue of material fact for trial. *Celotex Corp. v. Catrett*, 477 U.S.  
3 317, 324 (1986); *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475  
4 U.S. 574, 586-87 (1986). If the nonmoving party fails to make such a  
5 showing for any of the elements essential to its case for which it bears  
6 the burden of proof, the trial court should grant the summary judgment  
7 motion. *Celotex Corp.*, 477 U.S. at 322.

### 8 **C. Analysis**

9 The parties dispute whether Double L, Inc. is an insured under the  
10 policy. To resolve this issue, the Court turns to Idaho law.<sup>2</sup>

11 Idaho law provides, "every insurance contract shall be construed  
12 according to the entirety of its terms and conditions as set forth in the  
13 policy and as amplified, extended or modified by any rider, endorsement  
14 or application lawfully made a part of the policy." Idaho Code § 41-1822

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15  
16 <sup>2</sup> As a federal district court having subject matter jurisdiction  
17 over this lawsuit based on diversity of citizenship, the Court applies  
18 the law of the forum state, i.e., Washington, to determine which state's  
19 substantive law to apply. *See Patton v. Cox*, 276 F.3d 493, 495 (9th Cir.  
20 2002) (holding that federal courts sitting in diversity must apply the  
21 forum state's choice-of-law rules to determine the controlling  
22 substantive law). Washington courts utilize the substantive law of the  
23 state with the most significant relationship to the transaction; here,  
24 the parties agree that is Idaho. *See Dairyland Ins. Co. v. State Farm*  
25 *Mut. Auto Ins. Co.*, 41 Wn. App. 26, 31 (1985) (setting forth the factors  
26 to consider).

(2010); *Selkirk Seed Co. v. State Ins. Fund*, 135 Idaho 434, 437 (2000) (requiring the court to construe an insurance policy "as a whole, not by an isolated phrase"). An insurance policy's language governs if it is clear and unambiguous. *Hammon v. Farmers Ins. Co. of Idaho*, 109 Idaho 286 (1985). Policy language is construed in the "light most favorable to the insured and in a manner which will provide full coverage for the indicated risks rather than to narrow its protection." *Smith v. O/P Transp.*, 128 Idaho 697, 700 (1996). The court is tasked with interpreting and giving legal effect to an unambiguous contract. *Luzar v. W. Sur. Co.*, 107 Idaho 693, 697 (1984).

Consistent with the following policy provision, the parties acknowledge that Sentry owes the *insured* both a duty to defend and a duty to indemnify:

We will pay those sums that the *insured* becomes legally obligated to pay as damages because of "bodily injury" or "property damage" included within the "products-completed operations hazard" to which this insurance applies. We will have the right and duty to defend the insured against any "suit" seeking those damages. However, "we will have no duty to defend the insured against any "suit" seeking damages for "bodily injury" or "property damage" to which this insurance does not apply. We may, at our discretion, investigate any "occurrence" and settle any claim or "suit" that may result.

ECF No. 1-2 at 32 (emphasis added); see also *Cnty. of Kootenai v. W. Cas. & Sur. Co.*, 113 Idaho 908, 910 (recognizing the duty to defend and duty to indemnify are separate duties). The dispute is whether Double L, Inc. is an *insured* to whom Sentry owes these duties.

First, the Court notes that Apache River is the named insured, and there are no policy endorsements that explicitly add Double L, Inc. as a named insured. Therefore, the Court turns to section II of the policy, which defines "who is an insured." For a limited liability company, such

1 as Apache River, section II states that for a "limited liability company,  
2 you are an insured. Your members are also insureds, but only with  
3 respect to the conduct of your business. Your managers are insureds, but  
4 only with respect to their duties as managers." ECF No. 1-2 at 39.  
5 Double L, Inc. is neither a member nor a manager of Apache River;  
6 therefore, these provisions are not satisfied.

7 Section II also states that the insured's employees, real estate  
8 manager, temporary custodian of property, and legal representative  
9 following death may be an insured. There is no assertion that these  
10 provisions apply.

11 The Court concludes the remaining language of Section II requires a  
12 finding that Double L, Inc. is not an insured under the policy:

13 3. Any organization you newly acquire or form, other than a  
14 partnership, joint venture or limited liability company,  
15 and over which you maintain ownership or majority  
interest, will qualify as a Named Insured if there is no  
similar insurance available to that organization.

16 However:

- 17 a. Coverage under this provision is *afforded only until*  
the 90th day after you acquire or form the  
organization or the end of the policy period,  
whichever is earlier; and  
18 b. Coverage does not apply to "bodily injury" or  
"property damage" that occurred before you acquired  
19 or formed the organization.

20 No person or organization is an insured with respect to the  
21 conduct of any current or past partnership, joint venture or  
limited liability company that is not shown as a Named Insured  
22 on the Declarations.

23 ECF No. 1-2 at 40 (emphasis added). Even if Double L, Inc. is considered  
24 an organization that Apache River acquired and over which Apache River  
25 maintained ownership or a majority interest, it is undisputed that Double  
26 L, Inc. was "acquired" more than ninety days before Mr. Navarro's injury  
in 2009: the asset sale occurred in 2006.

For the reasons given above, **IT IS HEREBY ORDERED:** Sentry's Motion for Partial Summary Judgment, **ECF No. 20**, is **GRANTED**.

**IT IS SO ORDERED.** The District Court Executive is directed to enter this Order and forward copies to counsel.

**DATED** this 14<sup>th</sup> day of October 2011.

s/Edward F. Shea  
EDWARD F. SHEA  
United States District Judge

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